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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

* * * * *

UNITED STATES OF AMERICA

v.

LISA BIRON

* * * * *

* 12-cr-140-01-PB
* May 23, 2013
* 2:15 P.M.
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TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE PAUL J. BARBADORO

Appearances:

For the Government: John P. Kacavas, U.S. Attorney
Helen Fitzgibbon, AUSA
53 Pleasant Street
Concord, NH 03301

For the Defendant: James H. Moir, Esq
Moir & Rabinowitz, PLLC
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Concord, NH 03301

Probation Officer: Melissa Elworthy

Court Reporter: Sandra L. Bailey, LCR, CM, CRR
Official Court Reporter
United States District Court
55 Pleasant Street
Concord, NH 03301
(603)225-1454

1 BEFORE THE COURT

2 THE CLERK: Court is in session and has for
3 consideration a sentencing hearing in United States of
4 America versus Lisa Biron, Criminal Case No.
5 12-cr-140-01-PB.

6 THE COURT: Can I see counsel at sidebar.

7 AT SIDEBAR

8 THE COURT: I have a question about the victim
9 impact statement. My general view, a victim impact
10 statement should be public, and so I think we ought to
11 play it in the courtroom. Does anybody have a different
12 view about that?

13 MR. KACAVAS: I do not.

14 MR. MOIR: I don't either, your Honor.

15 THE COURT: Is there any statutory reason why
16 that should not happen?

17 MS. FITZGIBBON: Only for identity of the
18 child. If we could shut the monitors off like we did
19 with the display so the minor's face is not visible,
20 under 3509 we're supposed protect her identity.

21 THE COURT: Well, if she were here in court we
22 wouldn't have her testify behind the screen.

23 MS. FITZGIBBON: That's correct, your Honor,
24 but --

25 THE COURT: We don't want to identify her by

1 name.

2 MR. KAVACAS: Judge, we have no problem.

3 THE COURT: The problem I have -- I'll ask the
4 probation officer to come up. I can't get this to work.
5 So I hope you have one that works.

6 PROBATION OFFICER: I went to IT yesterday
7 with it because it wasn't working in my computer either.

8 MR. KAVACAS: We have a copy.

9 MS. FITZGIBBON: Yeah, but it's not -- all the
10 copies are the same format. I asked the paralegal if
11 there's a particular program to put it under.

12 THE COURT: So does anybody -- who prepared
13 this?

14 MS. FITZGIBBON: It was prepared by our office
15 by a paralegal.

16 THE COURT: And do you have something that --
17 a way that you can display it?

18 MS. FITZGIBBON: I'm going to ask. She
19 brought a laptop with her that I believe will probably
20 play it. Sometimes, too, your Honor --

21 THE COURT: You work with her paralegal so at
22 the appropriate time we can play it, okay?

23 THE CLERK: Do you want to take a break while
24 we do this?

25 THE COURT: No. We will just go ahead. It's

1 going to be a while before we get to that, so you can be
2 working on it to get ready. And if we need to take a
3 break to set it up, we can do that. So you get your
4 copy and --

5 MS. FITZGIBBON: Yes, your Honor.

6 IN OPEN COURT

7 THE COURT: All right, Ms. Biron, the
8 Presentence Investigation Report I have for you was
9 prepared on May 10th, it was revised on May 20th. Have
10 you seen that report?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Have you read it and discussed it
13 with your attorney?

14 THE DEFENDANT: Yes, I have, your Honor.

15 THE COURT: Do you feel you understand it?

16 THE DEFENDANT: Yes, I do, your Honor.

17 THE COURT: Thank you. You can be seated.

18 Does the government dispute any of the facts or legal
19 conclusions contained in the report?

20 MS. FITZGIBBON: No, your Honor.

21 THE COURT: The defendant is pressing certain
22 objections to the report. I'll hear you on those.

23 MR. MOIR: Your Honor, I've stated my
24 objections in the sentencing memorandum that I provided
25 to the court and I would incorporate those objections,

1 and I certainly can rest on those if the court would
2 like --

3 THE COURT: I would rather you didn't because
4 frankly I don't understand your position. So we need to
5 go through them one-by-one so that I can understand them
6 in order to determine whether they have any merit.

7 MR. MOIR: Very good, your Honor. My
8 objections, the first one I can start with is the 4B1.5.

9 THE COURT: Okay.

10 MR. MOIR: That's the pattern of sexual
11 activity increase.

12 THE COURT: Do you know which paragraph in the
13 report that is?

14 MR. MOIR: I have not referred to cross
15 paragraphs, your Honor, I apologize.

16 THE COURT: Maybe the probation officer can
17 tell me where it is.

18 PROBATION OFFICER: 116, your Honor.

19 THE COURT: Okay, so let's look at that
20 paragraph. Okay. There is a five-level increase
21 applied after Chapter Two and Chapter Three adjustments
22 are made because the defendant engaged in a pattern of
23 activity involving prohibited conduct.

24 So if you could just briefly state what your
25 argument is there.

1 MR. MOIR: My argument basically is this, your
2 Honor. Referring to the background section of 4B1.5, in
3 that section it states, and I can quote it, it only
4 applies if the instant conviction is a sex offense
5 committed against a minor, which this is of course, and,
6 it's the conjunctive, the defendant presents a
7 continuing danger to the public. It seems under the
8 background section that both those elements are
9 required. While I would submit the first one clearly
10 has been met, the second one has not. So based upon
11 that I would suggest the pattern of sexual activity does
12 not apply.

13 THE COURT: All right, let me ask you this.
14 It seems to me that in order to have any potential
15 effect on the guideline calculation, you must prevail
16 not only with respect to this argument, but at least one
17 of your other arguments.

18 MR. MOIR: I agree.

19 THE COURT: Is that right?

20 MR. MOIR: That is correct.

21 THE COURT: So let's lay this one aside for a
22 minute and look at your next one.

23 MR. MOIR: All right. The second one of
24 course is how this matter was grouped. That's under
25 3D1.2.

1 THE COURT: Okay. And that's paragraph 112,
2 deals with the grouping.

3 MR. MOIR: That's correct.

4 THE COURT: Okay. And how do you think they
5 should be grouped?

6 MR. MOIR: Well, under -- the way I look at
7 it, your Honor, is under the grouping the -- it does
8 state under grouping 3D1.2(d), specifically under that
9 excludes 2G2.1 from grouping under that subsection. But
10 we have to look at the other subsections a, b, and c.
11 And it does not exclude -- preclude from being included
12 under there.

13 THE COURT: Can I just stop you and ask, let's
14 set aside the technical argument first and just tell me
15 in words a layperson can understand. The way this
16 purports to group is it takes each count of conviction,
17 which each count having an adjusted offense level of 40,
18 and provides an increase of five levels.

19 MR. MOIR: That's correct.

20 THE COURT: For a total combined offense level
21 of 45.

22 MR. MOIR: Right.

23 THE COURT: What is your position as to how
24 that should be done?

25 MR. MOIR: The way I submit it should be done

1 is they should all be grouped together as one which
2 would have no increase there whatsoever, would not have
3 the five-level increase.

4 THE COURT: All right. So the theory is even
5 though she committed six distinct crimes for which she
6 was convicted -- excuse me, there are eight counts.

7 MR. MOIR: Eight counts altogether, your
8 Honor.

9 THE COURT: Even though she committed eight
10 counts of conviction, that she should only be sentenced
11 as if she had only been convicted of one of those
12 groups?

13 MR. MOIR: That's correct. That is my
14 argument because I'm looking at the language in
15 subsection A where the counts involve the same victim
16 and same transaction.

17 THE COURT: All right, let's get out the
18 guideline. Which manual are we using here? Is it the
19 2012?

20 PROBATION OFFICER: Yes, your Honor.

21 THE COURT: Okay. Which section of the
22 guideline are we dealing with?

23 MR. MOIR: 3D1.2(a), your Honor.

24 THE COURT: Let me read what I think is the
25 correct provision and you tell me if I'm right. All

1 counts involving substantially the same harm shall be
2 group together into a single group. Counts involving
3 substantially the same harm within the meaning of this
4 rule -- excuse me, counts involving substantially the
5 same harm within the meaning of this rule when counts
6 involve the same victim and the same act or transaction.

7 MR. MOIR: That's correct.

8 THE COURT: All right. And your position is
9 that all eight counts here involve the same victim and
10 the same act or transaction.

11 MR. MOIR: They clearly involved the same
12 victim, your Honor. Part two, I'm submitting that this
13 involves the same harm to the same victim.

14 THE COURT: The words are act or transaction.

15 MR. MOIR: Act or transaction, that's correct.

16 THE COURT: Okay. And why do you think these
17 various counts, which occurred at various times with
18 various different males in various different places, are
19 part of the same transaction?

20 MR. MOIR: My focus is on the victim and the
21 effect upon the victim. I submit that, and maybe it's a
22 broad interpretation of transaction, but I submit that
23 the various counts here would constitute the same
24 transaction.

25 THE COURT: Well, if your standard were

1 correct, which is counts that involve the same victim
2 should be grouped together without regard to whether
3 they are from the same act or transaction, your reading
4 seems to lead superfluous the last part of the sentence.
5 You would stop, when the counts involve the same victim,
6 group them all together. And that's not what the
7 guideline says. It says when the counts involve the
8 same victim and the same act or transaction.

9 So we need both. We need same victim and same
10 act or transaction. What's your argument that these are
11 the same act or transaction?

12 MR. MOIR: My argument that it's the same act
13 or transaction comes down to the fact that we have,
14 again, I know I'm sounding somewhat circular here, but
15 we have the same victim with the same harm, we do have
16 the activities being similar between them, and therefore
17 I'm submitting that that would constitute the act, or
18 transaction, because transaction is a broader term than
19 act. I think we have different acts here, but we have
20 the disjunctive there, so to give the word transaction
21 some meaning, I would submit transaction is broader than
22 act.

23 THE COURT: Okay, so let's look at the
24 examples that are given. If you look in the application
25 notes, and you look at application note three. They

1 provide an example, right?

2 MR. MOIR: Yes.

3 THE COURT: Example six is the defendant is
4 convicted of two counts of assault on a federal officer
5 for shooting at the officer on two separate days. The
6 counts are not to be grouped together.

7 Isn't our case more like that example than all
8 of the other examples listed there which are examples
9 that involve multiple convictions coming out of the same
10 act or transaction?

11 MR. MOIR: My argument is that they are
12 different, your Honor. The difference that I have here,
13 again, in the examples they give they have none that are
14 on all fours with this case.

15 THE COURT: But they give five examples where
16 they are part of the same act or transaction, and in
17 each of those cases there are multiple convictions that
18 arise from conduct that occurs as a part of the same
19 temporally linked event. It's not just that they have
20 the same victim. It's there's a temporal link to the
21 event. And then they give us one example where they
22 aren't part of the same act or transaction, and that's
23 where the same person is shot on two separate days.
24 This seems much more like the latter example than the
25 former set of examples, doesn't it?

1 MR. MOIR: I agree. It's different from the
2 former but I don't think they really had much to do with
3 this at all. This is the one I think the court points
4 out is closer but its certainly not on the point.

5 Let me just give you another example related
6 to this case. Some of the convictions of Ms. Biron
7 involved, again, the filming of sex acts in Canada in a
8 hotel room. They're all in the same place, same people,
9 same --

10 THE COURT: And they are grouped; right?

11 MR. MOIR: They could be grouped together, but
12 they were not grouped together here. I don't believe
13 so.

14 PROBATION OFFICER: They were not, your Honor.

15 MR. MOIR: They have not been grouped
16 together.

17 THE COURT: All right, so, I may have a
18 problem with what the probation officer has done. You
19 need to explain this to me. Why are not the things that
20 happened in Canada part of the same act or transaction?

21 PROBATION OFFICER: Because they occurred on
22 different days and on different times.

23 THE COURT: But as a part of the same trip.

24 PROBATION OFFICER: It was part of the same
25 trip, your Honor, but I view it as separate acts.

1 THE COURT: All right. Let's go through
2 exactly how you grouped these, then, okay, and let's
3 find out if this makes any difference to the analysis.

4 So, you have grouped Counts One, Two and
5 Eight. What are those?

6 PROBATION OFFICER: Count One involves the
7 transportation. Transporting the victim across state
8 lines or across, I should say not state lines here,
9 national lines over to Canada to engage in sex acts.

10 THE COURT: Ah-hum.

11 PROBATION OFFICER: Count Eight is the
12 production of child pornography.

13 THE COURT: Arising from the filming in the
14 hotel room.

15 PROBATION OFFICER: Exactly.

16 MS. FITZGIBBON: Excuse me, Count Eight is
17 possession, Count Two is production.

18 PROBATION OFFICER: I'm sorry, yes, Count
19 Eight is possession of the child pornography.

20 THE COURT: Okay. Two is production, Eight is
21 possession.

22 PROBATION OFFICER: Count Two is actually not
23 production of child pornography, it's -- that's not the
24 way it was charged. It was charged by sexual
25 exploitation of a minor.

1 MS. FITZGIBBON: That's the name of the
2 statute, your Honor, but it is the production.

3 THE COURT: That's a production charge.

4 MS. FITZGIBBON: That is a production charge,
5 but it's called the sexual exploitation of a child, yes.

6 THE COURT: Am I missing something? I think
7 of it as that's what production of child pornography is.

8 PROBATION OFFICER: Right, your Honor,
9 but that's --

10 THE COURT: That's not the name that the
11 statute has, but that's what we all know it to be,
12 production of child pornography. So, does the defense
13 attorney disagree with that, that Count Two is a
14 production of child pornography count?

15 MR. MOIR: That's what I believe the
16 indictment says.

17 THE COURT: Yeah. So, One, Two and Eight all
18 involve the Canada trip, but there are other counts that
19 also involve the Canada trip that you haven't grouped.

20 PROBATION OFFICER: Yes, your Honor.

21 THE COURT: Which counts are those?

22 PROBATION OFFICER: I grouped One, Two and
23 Eight together because they all involved the Canada
24 trip.

25 THE COURT: Yeah.

1 PROBATION OFFICER: And then I grouped One,
2 Three and Eight together. They involve the Canada trip.
3 But it's a sexual assault that occurred on a different
4 day.

5 THE COURT: All right. Let me ask the
6 prosecutor. Do you agree with this analysis?

7 MS. FITZGIBBON: Your Honor, we do agree with
8 Ms. Elworthy in that the way she did the grouping has
9 basis in the guidelines, in the law. As we pointed out
10 in our memo, your Honor, for purposes of this case we
11 wouldn't have an objection or press an objection if the
12 Canada trip was seen as one transaction.

13 THE COURT: If we group these as the Canada
14 trip, all the offenses being one grouping, how would
15 that affect your analysis?

16 PROBATION OFFICER: It would reduce the --
17 give me one moment, your Honor.

18 THE COURT: Let me ask if the prosecutor
19 knows. If we reduce the --

20 MS. FITZGIBBON: It's less than five so it
21 does not impact the guideline where it is.

22 THE COURT: But does it stay at a five-level
23 enhancement or is it something less than five levels?

24 MS. FITZGIBBON: I believe it's going to be
25 less.

1 PROBATION OFFICER: It is less, your Honor. I
2 believe it's a three-level enhancement.

3 MS. FITZGIBBON: I believe three.

4 THE COURT: How about the -- we need to go
5 through these counts, then. I want to know from the
6 prosecutor's standpoint.

7 MS. FITZGIBBON: Yes.

8 THE COURT: Let's go through this and if you
9 accept that the Canada trip, because it involved a
10 continuous -- the argument that the defense -- let me
11 just be clear. Mr. Moir's argument is, I don't accept
12 it to the extent he thinks that all these things that
13 happened in entirely different places on entirely
14 different dates with entirely different defendants are
15 part of the same group. No offense, counsel, there's
16 just no support in the guideline for that position.

17 I'm willing to entertain an intermediate
18 position, which maybe he isn't advancing, but I assume
19 that if you don't get your all out victory, in the
20 alternative you'd say you should group by event here and
21 could include all the Canada charges in one grouping.

22 MR. MOIR: In fact I considered that and I
23 discussed that with the probation officer in this case
24 prior to this. I have taken the position they all
25 should be grouped. But obviously if the court rejects

1 that I would go to that as the second position.

2 THE COURT: Okay. So that at least seems to
3 me your position that is worth entertaining because
4 unlike the fact pattern where the example we're given of
5 an officer shot on consecutive days, taking a trip to
6 Canada, and each time you start the camera and film, if
7 you treat that as entirely distinct event rather than
8 grouping those, it would seem to me it could arguably
9 disregard the guideline reference which suggests that if
10 something is a part of a continuing course of conduct,
11 it can be considered a part of the same transaction
12 notwithstanding the fact that some period of time goes
13 by. I mean, your position is that if there's a break in
14 time between production one and production two, even if
15 it's part of the same trip, part of the same place with
16 the same victim, the same male participant, that it's a
17 distinct act and it should not be grouped.

18 PROBATION OFFICER: Yes, your Honor.

19 THE COURT: Okay. And do you understand the
20 argument that I would expect the defendant to be making
21 that the guidelines recognize that things that can be
22 temporally distinct but if they are part of an ongoing
23 course of conduct, they can be grouped together even
24 though, say, for example, you kidnap, there's an example
25 here of kidnapping somebody and assaulting them. They

1 can be grouped even though they are, occur at slightly
2 different times.

3 PROBATION OFFICER: Yes, your Honor.

4 THE COURT: Right? So the argument would be,
5 thinking analogically, the Canada trip is more like
6 kidnapping somebody and assaulting them while you have
7 them kidnapped, isn't it?

8 MS. FITZGIBBON: Yes, your Honor.

9 THE COURT: Taking them across the border and
10 producing child pornography with them on multiple
11 occasions on that trip is arguably like the example of
12 kidnapping somebody and assaulting them, isn't it?

13 MR. KAVACAS: Yes, your Honor.

14 THE COURT: Which would sort of suggest that
15 they should be -- that they should be grouped as one
16 count for one unit or -- one group as they call it under
17 the guidelines. Is that reasoning making sense to you?

18 MR. KAVACAS: It does, your Honor. I do
19 understand. I want to point out, there is case law to
20 support the probation officer's statement that filming
21 that takes place on different dates does -- does not
22 lend itself to grouping. She's absolutely correct
23 there, your Honor. As our memo pointed out --

24 THE COURT: Well, then, by that reasoning,
25 taking her across the line, if it occurs differently

1 from the time when you're filming, that shouldn't be
2 grouped either?

3 MS. FITZGIBBON: Yes, that's correct, your
4 Honor.

5 THE COURT: If you adopt a mechanical they
6 must be temporally identical events, otherwise they
7 don't get grouped, but that's not what the application
8 notes tell us.

9 MS. FITZGIBBON: And your Honor, as we pointed
10 out in our memo, we do, and when we ask for a sentence
11 we do look at the Canada trip as a transaction. And for
12 that purpose we said that for purposes of this for
13 grouping, the counts involved in Canada, we would not
14 press an objection to those counts being grouped, but
15 certainly we would press an objection to the other
16 instances being grouped.

17 THE COURT: All right, well, I think taking a
18 more conservative approach, I'm not faulting the
19 probation officer here, since the government is prepared
20 to not object to grouping, we should at least group the
21 Canada counts which, let's identify those counts, let's
22 do the grouping, let's see where we come out, okay. So,
23 what are the Canada counts?

24 MS. FITZGIBBON: Okay, Count One, your Honor,
25 is the transportation of the child into Canada. Counts

1 Two, Three, Four and Five are sexual exploitation
2 through the production of child pornography in Canada.
3 Count Five is a production count that took place in
4 Manchester. Count Six is a separate production charge
5 that took place in Manchester -- I'm sorry, Seven is.
6 And Count Eight is possession.

7 THE COURT: Okay, so your position is that all
8 of the Canada counts can be grouped in one group and
9 each of the other charges should be in a distinct group?

10 MS. FITZGIBBON: Yes, your Honor.

11 THE COURT: Okay. Let's run it that way and
12 tell me how many level increase we have.

13 PROBATION OFFICER: I figured it out exactly
14 the way the prosecutor had just explained it. That
15 would amount to a three-level -- three units. So a
16 three-unit increase which would make it an increase in
17 offense level of three and combined adjusted offense
18 level of 43.

19 THE COURT: Okay. So rather than 45 it would
20 be 43.

21 PROBATION OFFICER: Yes.

22 THE COURT: Which is still above the maximum
23 that would implicate a life sentence under the guideline
24 range.

25 PROBATION OFFICER: Yes, your Honor.

1 THE COURT: All right. Everybody agree on
2 that?

3 MS. FITZGIBBON: Yes.

4 THE COURT: Okay. Now, I'm proposing to
5 accept your argument to that extent, the extent to which
6 the government has not objected, and to instruct the
7 probation officer to recalculate the units along those
8 lines.

9 Now, you would like to press an argument that
10 even that recalculation is not legally correct, and just
11 explain to me why it is that the grouping done in the
12 manner that the government is prepared to accept does
13 still not sufficiently address your argument that they
14 should all be grouped in one count.

15 MR. MOIR: Before I do that can I make a
16 further interim step that should be considered? What's
17 happened here is by grouping the Canada trip together,
18 one of the questions is why not put the transportation
19 with it because that seems to be all part of the same
20 transaction.

21 THE COURT: It is.

22 MR. MOIR: So we've got that together, they're
23 all together?

24 THE COURT: Yes.

25 MR. MOIR: And then we have the possession of

1 the pornographic images.

2 THE COURT: Those are distinct, are they not?

3 MS. FITZGIBBON: Yes, your Honor, because the
4 possession includes images that were created even after
5 the Canada trip, and the possession was occurring on the
6 date of the arrest. So that is not all part of that
7 transaction. They've added possession other than just
8 the Canada count.

9 MR. MOIR: And yet the possession of those do
10 come from the Canada trip and then the New Hampshire
11 ones. So I guess the question, should they be grouped
12 together.

13 THE COURT: Will the prosecutor refresh my
14 memory. What specifically was the evidence introduced
15 to support the possession charge as a distinct offense
16 from the production counts?

17 MS. FITZGIBBON: The possession charge, your
18 Honor, was supported by the computer drive that the
19 expert testified to that contained all of the images
20 named in all of those counts, Two through Seven. So, he
21 testified that on this computer was found images
22 involving the Canada trip, images involving Manchester
23 production with another male individual, and the final
24 count involving the defendant's production of herself.

25 THE COURT: All right. So I just want to be

1 clear about this because nobody has raised this issue
2 with me. The defendant has not moved to argue that
3 Count Eight can't be recognized as a distinct count of
4 conviction. You haven't done that; right?

5 MR. MOIR: That's because I was going for the
6 entire same grouping.

7 THE COURT: Whether you do or not, though, you
8 seem to be suggesting that the child pornography
9 possession charge is duplicative of the counts of
10 conviction on the manufacturing charges, and that one
11 cannot be convicted for separate offenses for both
12 producing a piece of child pornography and possessing
13 it. Are you making that argument? You haven't made it
14 up till now.

15 MR. MOIR: I haven't made up till now and I'm
16 looking at the grouping for this, your Honor, is what
17 I'm looking at.

18 THE COURT: Yeah, but your argument is
19 essentially that it is duplicative of the production
20 charges.

21 MR. MOIR: For the grouping purposes, yes,
22 that's what I'm arguing.

23 THE COURT: So if you produce child
24 pornography, you're going to possess it, are you not?

25 MS. FITZGIBBON: Yes, your Honor.

1 THE COURT: And why, then, can you be
2 prosecuted for distinct counts of production and
3 possession?

4 MS. FITZGIBBON: The possession was an
5 ongoing, it continued well after the production --

6 THE COURT: So you commit a separate offense
7 of possession for every day that you possess a piece of
8 pornography?

9 MS. FITZGIBBON: Yes, your Honor.

10 THE COURT: So if you possess it for day one,
11 you can be charged in Count One, possessing on
12 November 1st, and then you can be charged in Count Two,
13 possession on November 2nd, possession on November 3rd.
14 Are you really saying that?

15 MS. FITZGIBBON: No, your Honor. What I'm
16 saying, your Honor, is the production took place, there
17 is a way that you could produce and no longer possess.
18 But when you produce that video --

19 THE COURT: Right.

20 MS. FITZGIBBON: -- it was also found on a
21 separate date separate from the production. Her
22 possession of those images is a separate offense. I
23 would have to check, your Honor, because I wasn't --

24 THE COURT: You're not really giving me very
25 clear answers to this issue. Now, maybe you could make

1 an argument that to the extent that a separate effort is
2 made to preserve the images, that that can make you
3 guilty of possession and that that's a distinct event.
4 Now, this is something, you know, frankly, that should
5 have been briefed to me. Do you understand his
6 argument?

7 MS. FITZGIBBON: I understood what your Honor
8 brought up. I --

9 THE COURT: There is a problem conceptually in
10 trying to understand how you can be convicted of both
11 producing an image and separately possessing it, because
12 the possession is, I haven't analyzed this, but it would
13 seem to me probably a lesser included offense within the
14 act of production, because in order to produce you must
15 possess. And if that is true, then one cannot be
16 convicted of both the greater and the lesser included
17 offense.

18 MS. FITZGIBBON: And, your Honor, I would
19 brief this, you're right, this is not anything that I
20 had briefed for today --

21 THE COURT: Let me ask this. If you did not
22 group the possession charge and you only grouped the
23 other charges, that is so you'd have three groups of
24 production, Canada-related offenses including production
25 and the other two.

1 PROBATION OFFICER: I think -- can I clarify,
2 your Honor?

3 THE COURT: Yes.

4 PROBATION OFFICER: The possession of child
5 pornography is grouped with the Canada stuff. It's
6 grouped three times. I think that's where we're getting
7 confused about here.

8 THE COURT: So there's no separate grouping
9 for possession?

10 PROBATION OFFICER: No, your Honor.

11 THE COURT: Well, then, the whole point is a
12 moot point.

13 PROBATION OFFICER: Exactly. Count One
14 through Five and Eight are grouped together. Count Six
15 and Eight are grouped together. And Count Seven and
16 Eight are grouped together.

17 THE COURT: Okay, that's what I -- that makes
18 perfect sense to me. That's what I thought we were
19 dealing with. Which is all the Canada counts are
20 grouped, including possession to the extent possession
21 is a distinct charge of the Canada-related materials.
22 All of the other two production events, which are
23 distinct production events, are grouped. So we have
24 three groups and we calculate our units for three groups
25 rather than the way you had done it here.

1 PROBATION OFFICER: Yes, your Honor.

2 THE COURT: Okay. And if we use three groups,
3 which you agree is an appropriate way to do it, we get a
4 total increase of three levels as a result of grouping.

5 MS. FITZGIBBON: Yes, your Honor.

6 THE COURT: And I am very comfortable in
7 concluding that the way the government says is
8 acceptable to it, is in fact a legally permissible way
9 of doing it. And I don't see that you have presented
10 any persuasive argument to me that that is not an
11 acceptable way to group.

12 So, any last argument you want to make that
13 you haven't made up till now?

14 MR. MOIR: The only argument I make on that,
15 your Honor, is I'm trying to distinguish between act and
16 transaction. I'm taking a very broad view of
17 transaction.

18 THE COURT: I understand, and I find as a
19 matter of fact here that these events are sufficiently
20 disparate that they are neither part of the same act or
21 transaction if grouped the way I suggest they should be
22 grouped.

23 So I direct the probation officer to modify
24 the report to reflect the change that we have identified
25 here, both the change to paragraph 112, the change to

1 paragraph 113 and 114 and 115 and any corresponding
2 changes that are necessary to follow from that. So we
3 are adjusting the grouping finding of the probation
4 officer to group it into three groups rather than the
5 number of groups the probation officer has identified.
6 The net effect is a 43 rather than a 45, which still
7 brings your client above life, and renders superfluous
8 your argument with respect to the five-level increase
9 under chapter -- excuse me, under paragraph 116. You
10 see my point? Because I can't get to a higher guideline
11 than life.

12 MR. MOIR: I understand that.

13 THE COURT: And she gets to life with 43, and
14 so I don't need to decide anything more than that. I
15 can simply, it's my view that where that guideline issue
16 of whether that adjustment applies or not is irrelevant
17 to my guideline calculation, and I can tell you quite
18 clearly it won't affect my discretion in how I sentence
19 regardless of how I resolve that particular issue.
20 Accordingly, I don't propose to resolve the issue. And
21 I will simply determine that she has a total offense
22 level of 43 and not resolve that particular issue.

23 So I overrule your objection with respect to
24 grouping. I decline to address the specifics of the
25 legal analysis that pertains to the paragraph 116

1 adjustment because it's unnecessary for me to do so to
2 calculate the defendant's guideline range, and doing so
3 would not affect my ultimate sentencing judgment in this
4 case. And I would propose to determine that the
5 defendant's total offense level is 43.

6 Do you have other objections that you want to
7 take up with me?

8 MR. MOIR: There are not, your Honor.

9 THE COURT: Okay. So I otherwise adopt the
10 findings of fact and conclusions of law set forth in the
11 report which will be made a part of the record under
12 seal.

13 I determine that the defendant's total offense
14 level is 43. Her Criminal History Category is I. The
15 guideline sentencing range for this defendant is life.

16 Does the probation officer -- have I made
17 myself sufficiently clear? I apologize if I haven't
18 been, but do you --

19 PROBATION OFFICER: Yes, your Honor, I totally
20 understand.

21 THE COURT: Okay, okay, good. Okay, so, we've
22 now got a guideline range. The defendant has a motion
23 for a variance, but I will hear the government on its
24 recommendation first.

25 MS. FITZGIBBON: Your Honor, the government's

1 recommended a sentence of 100 years, and based on the
2 following implementation if you will: We're asking the
3 court to sentence the defendant to the 10-year minimum
4 mandatory on Count One. That is the transportation
5 count.

6 We're asking that the court sentence the
7 defendant --

8 THE COURT: Isn't the maximum sentence on that
9 life?

10 MS. FITZGIBBON: Yes, your Honor. I'm sorry,
11 it's the minimum mandatory.

12 THE COURT: Why don't we just give her -- why
13 don't we just give her, if you want a hundred years,
14 just give her a hundred years on Count One?

15 MS. FITZGIBBON: Your Honor, I think it's
16 important to note the harm that's perpetrated in each of
17 the other counts and have a sentence associated with
18 those counts.

19 THE COURT: To me that seems, I mean, what we
20 do is -- well, let's assume a hundred years were right.
21 We give a hundred years on Count One. We would give
22 30 years on Count Two through Seven, whatever the
23 statutory maximum is, to run concurrent with a hundred
24 year sentence. That's an acceptable way to achieve a
25 hundred year sentence, isn't it?

1 PROBATION OFFICER: Yes, your Honor.

2 THE COURT: Why wouldn't we do that?

3 MS. FITZGIBBON: Again, your Honor, simply we
4 were asking that you look at each of the harms
5 perpetrated in the creation of the child pornography and
6 recognize those. For instance, the production of those
7 --

8 THE COURT: Well, I'm giving her statutory --
9 if I bought your argument, I'd be giving the statutory
10 maximum sentence for every one of the other offenses,
11 because none of them have a life sentence as a statutory
12 maximum.

13 MS. FITZGIBBON: Actually --

14 THE COURT: So you would be getting the
15 statutory maximum on Two, Three, Four, Five, Six, Seven,
16 Eight. I don't know why -- you're asking me something
17 we don't do. I mean this almost never happens. You
18 want a sentence on each one and then run each one
19 consecutive to get to -- that's not the way it's done in
20 federal court.

21 MS. FITZGIBBON: Four consecutive, your Honor,
22 we're asking with four running concurrently.

23 THE COURT: Can I legally do that? I can.
24 But it just unnecessarily complicates the analysis in my
25 view. I mean, am I missing something? I ask the

1 probation officer. We normally run, we take the longer
2 sentence, impose it, and then run concurrent sentences
3 on the other counts, don't we?

4 PROBATION OFFICER: In most cases we do do
5 that, your Honor.

6 THE COURT: What would be the benefit of
7 running certain sentences consecutive?

8 PROBATION OFFICER: The benefit, when we're
9 dealing with cases when there's victims, a lot of times
10 we will do, I shouldn't say we, a lot of times the
11 prosecutor will ask for sentences based on specific
12 counts to reflect certain harms to those victims.

13 THE COURT: I almost never see that, frankly.
14 I can't remember in 20 years more than a handful of
15 times where that's been done. But there's nothing
16 illegal about it. But here we have one victim, so I
17 don't know why that argument would apply at all.

18 PROBATION OFFICER: Correct.

19 THE COURT: So, any other benefit to doing it
20 the way you're suggesting?

21 MS. FITZGIBBON: The benefit, to expand a
22 little bit, yeah, the grouping, just as we addressed
23 with the grouping, your Honor, the United States
24 Attorney's office looks at this, the various charges as
25 very clear episodes of harm. And again, recognizing the

1 individual --

2 THE COURT: Yeah, that's great for purposes of
3 conviction, but I'm imposing one sentence, and to treat
4 -- this isn't a game. This is really serious stuff and
5 we have to look at this holistically and try to come up
6 with the right sentence. So, you know, trying to treat
7 it as if I have separate judges sentencing the defendant
8 on separate dates for separate offenses is a kind of
9 mechanical approach that doesn't allow for a holistic
10 recognition of the harm that flows from this criminal
11 conduct. So I'm not inclined to do it that way.

12 MS. FITZGIBBON: Your Honor, if I may.
13 Strictly when I speak of episodic, we also -- the
14 sentence, if the court were to grant a hundred-year
15 sentence on the transportation of a minor across state
16 lines, the transportation of a minor across state lines
17 for illegal purposes could obviously include any variety
18 of harm. In this case we are asking you to not just
19 recognize that transportation, because that of course
20 involves the Canada offenses, but the very serious
21 nature of the harm that took place in Manchester --

22 THE COURT: Bu I guess my point is, when I
23 view somebody -- when somebody is in front of me for
24 sentencing on multiple counts, I issue one sentence that
25 captures correctly the reasonable sentence for the

1 conduct that is in front of me. And to make these
2 distinctions, like if you're thinking that, oh, if I
3 imposed a hundred-year sentence on transportation, that
4 would be excessive because just looking at the
5 transportation in isolation, that would be too high a
6 sentence. I don't know, I mean, maybe other judges do
7 that. I don't. I've never done that. I look at what
8 did this defendant do wrong that I'm sentencing her for.
9 And I look at that and say what's the right sentence
10 ultimately for all of that conduct that I can legally
11 sentence her for. And how I apportion it among the
12 statutes is really of no practical importance.

13 MS. FITZGIBBON: Then your Honor, if your
14 Honor chooses not --

15 THE COURT: If I'm making a mistake by doing
16 that, tell me why.

17 MS. FITZGIBBON: No, your Honor. I understand
18 what the court is saying. Perhaps I should couch it in
19 terms of it's important that the court understands, too,
20 that a hundred years was not pulled from nowhere. That
21 very much our recommendation to you is based on --

22 THE COURT: Well, you can make your argument
23 that I think that ten years is for this and another ten
24 years for that and then 30 years for this and that's how
25 we get up, I mean, but, you can make that argument, but

1 just the very fact that magically it happens to end up
2 as the round number of 100 suggests to me that that's
3 not in fact how you did your analysis, because it's much
4 more likely to come out at something like 92 or 105.
5 And the fact you came out with the magic number of 100
6 suggests that somebody did what I'm suggesting should be
7 done, which is to look holistically at the crimes and
8 determine what an appropriate sentence is for them.
9 It's not to do this kind of adding up as if I know
10 nothing about the nature of these crimes in total. It's
11 like, okay, put blinders on, analyze the first one. Now
12 I'm done with that. Now put blinders on and analyze the
13 second. That's not the way judges sentence.

14 MS. FITZGIBBON: Actually, your Honor, the
15 number was arrived at by taking the three episodes that
16 we have --

17 THE COURT: It's just a magical chance that it
18 came out to the round number of 100.

19 MS. FITZGIBBON: If you have three episodes of
20 child pornography as we have, your Honor, and go with
21 the statutory maximum on those, because we will argue to
22 you that because there's no mitigating we're asking for
23 the maximum on each of those episodes, and then add the
24 10-year minimum mandatory for taking --

25 THE COURT: That's four charges out of eight,

1 so you're not giving any harm to the other four charges?

2 MS. FITZGIBBON: On the possession, your
3 Honor, we thought that that was a number that would most
4 likely because that isn't a the min. or a man.

5 THE COURT: All right, that's five. You add
6 zero for that. Now what -- you add zero on the other
7 three charges.

8 MS. FITZGIBBON: Because of the episodic
9 nature of them, your Honor, we had chosen and ask you to
10 sentence one mass in Canada.

11 THE COURT: Okay, that argument isn't cutting
12 any slack with me. Please argue to me why a hundred-
13 year sentence is the right sentence given all of the
14 wrong things that the defendant did for which she was
15 convicted and can be sentenced.

16 MS. FITZGIBBON: For all of the wrong things
17 that the defendant did, your Honor, it is difficult to
18 consider, to come up with a sentence that --

19 THE COURT: Why not ask for a life sentence?

20 MS. FITZGIBBON: Your Honor, a life sentence
21 would not be out of the range of reasonableness for this
22 defendant. And in a sense we are asking you for a life
23 sentence because we're asking you to impose 100 years.

24 THE COURT: Well, a 40-year sentence would be
25 a life sentence. A 50-year sentence would be a life

1 sentence. A 60-year sentence would be a life sentence.
2 High probabilities. And we would just be knocking off
3 what is the probability that it's not a life sentence.
4 A 60-year sentence here, she's in her forties, right?
5 Do you think in prison she's likely to live beyond a
6 hundred? No. So a 60-year, that's probably a
7 98 percent likelihood of being a life sentence. A
8 50-year sentence probably has a 90 percent likelihood of
9 being a life sentence. A 40-year sentence probably has
10 an 80 percent likelihood of being a life sentence. A
11 hundred years has a hundred percent likelihood of being
12 a life sentence. But why not just ask for a life
13 sentence then?

14 MS. FITZGIBBON: And, your Honor, when we were
15 faced with this similar situation in a recent case where
16 the sentence was over a hundred years, that is the exact
17 question. When you are looking at a sentence that is
18 essentially a life sentence, where is the right number
19 in that range, particularly when you're faced with a
20 situation like this one where there's really no number
21 that captures justice for what was done here. And I
22 really am not trying to debate the court. It seriously
23 was something that we considered in looking at things
24 episodically and looking at the statutory structure.

25 THE COURT: I think that gives you a false

1 sense that you've done something meaningful. That's my
2 view. So I'm not inclined to take that approach. I
3 must struggle with the harder question of what's the
4 right sentence for this defendant given the horrible
5 crimes that she has committed. I think that's the
6 responsibility here.

7 So, I understand for you there might be
8 symbolic value of giving somebody a hundred years, many,
9 many decades longer than she will in fact live, but I'm
10 not sure that it really answers the questions of what's
11 the right sentence for this defendant.

12 Help me try to figure out what the right
13 sentence is.

14 MS. FITZGIBBON: The right sentence, your
15 Honor, is a sentence that insures her having a life
16 sentence. This, and again --

17 THE COURT: Let me ask you this. You have a
18 victim witness coordinator who works out of your office?

19 MS. FITZGIBBON: We do, your Honor.

20 THE COURT: And part of that victim
21 coordinator's job is present to the court victim impact
22 statements?

23 MS. FITZGIBBON: Yes, your Honor.

24 THE COURT: Do you think victim impact
25 statements should be irrelevant to the court's

1 sentencing consideration?

2 MS. FITZGIBBON: They should not be
3 irrelevant, your Honor, but they should also not be
4 controlling.

5 THE COURT: I agree they shouldn't be
6 controlling, but they should be relevant, should they
7 not?

8 MS. FITZGIBBON: They are never irrelevant to
9 the court, your Honor.

10 THE COURT: Okay. So, in a case in which a
11 victim has been egregiously harmed and want to convey
12 that harm to the court in order to try to obtain a
13 higher sentence, the court should listen to that victim
14 and consider the impact of the crime on that victim;
15 right?

16 MS. FITZGIBBON: The court should, your Honor.
17 Particularly in the instance of children victims, I have
18 seen your Honor listen to those statements but also
19 acknowledge that children victims don't always have the
20 right analysis of what is the right sentence for the
21 perpetrator.

22 THE COURT: No, but I think we can agree, can
23 we not, that victim statements are worthy of
24 consideration when a judge sentences.

25 MS. FITZGIBBON: Absolutely.

1 THE COURT: Okay. In this particular case we
2 have a victim who has been, in my view, deeply damaged
3 by the defendant's egregious misconduct. Do you agree
4 with that?

5 MS. FITZGIBBON: Yes, your Honor.

6 THE COURT: Do you think it is a relevant
7 consideration to sentencing how the sentence may affect
8 the victim's ability to deal with the egregious harm
9 that has been done to her?

10 MS. FITZGIBBON: I do, your Honor. I think
11 that the problem with that, however, is we don't know
12 right now what the long-term affect of this damage is or
13 what, any action that takes place today is going to have
14 on this child down the road.

15 THE COURT: Should I give some consideration
16 to what the victim thinks at the moment about what would
17 help her best with her effort to address the trauma that
18 she suffered?

19 MS. FITZGIBBON: I would always assume that
20 the court would take into consideration that.

21 THE COURT: You know why I'm raising this
22 question?

23 MS. FITZGIBBON: I do, your Honor.

24 THE COURT: So, the victim here wrongly, and I
25 think egregiously wrongly, has assumed a sense of guilt

1 for the conduct that she has suffered at the hands of
2 this defendant and has expressed a concern to the court,
3 and we will see in the victim, I haven't seen it but it
4 has been described to me, in the victim impact
5 statement, that she does not want the court to impose a
6 life sentence. Should I consider that?

7 MS. FITZGIBBON: You should consider it, your
8 Honor, just as I know it was considered in other cases
9 as well. There was a case in this court involving a
10 60-year sentence where the child, who had been a victim
11 of assaults, didn't want that perpetrator going to jail
12 for the rest of his life, asked can he stay out the rest
13 of his life. It was certainly considered, but I believe
14 the court's overwhelming response was that the harm was
15 too egregious and that the sentence did in fact turn out
16 to be a number of years that equaled a life sentence.

17 THE COURT: A sentencing seeks to vindicate
18 primarily society's interest in seeing that a criminal
19 defendant is appropriately held to account for her
20 criminal conduct. I think we would agree on that, would
21 we not?

22 MS. FITZGIBBON: Yes.

23 THE COURT: But the law recognizes the victim
24 should be allowed to have a say in the sentencing
25 process. And so the struggle I'm having here is I want

1 to pay due respect to the victim's concerns here while
2 not surrendering my obligation to see that society's
3 interests are vindicated. But I think particularly
4 where we have a very damaged young person here, who is
5 not so young as to have her voice be completely
6 disregarded, she's a person capable of autonomous
7 decision making, that I should, when I sentence here, to
8 some degree try to take into account how the sentence
9 might affect or aid her ability to deal with the trauma
10 that she has suffered. Isn't that a fair thing to do?

11 MS. FITZGIBBON: It is fair. I would ask,
12 your Honor, that when your Honor does consider that, you
13 take into account also the temporal nexus here in time.
14 At the time of the trial, obviously, and the testimony
15 you heard from witnesses, you're right, this child was
16 someone who believed she was an equal partner in the
17 crime here that she took responsibility. She has made
18 progress in that. I believe she will continue to make
19 progress in getting away from that.

20 THE COURT: The goal is to see that hopefully
21 she can get to the point of recognizing that she is
22 100 percent victim and this defendant is 100 percent
23 perpetrator.

24 MS. FITZGIBBON: Correct, your Honor.

25 THE COURT: And we want to try to speed that

1 goal, certainly all of us who have had any involvement
2 in this case, would like to see that happen. I have
3 other considerations, obviously, that I have to take
4 into account in sentencing. But I think I should at
5 least be mindful of how my sentence might impact that
6 victim and to try to make some reasoned assessment about
7 whether this sentence or that sentence might have some
8 bearing on her, helping her come to the realization here
9 that you have no reason to feel guilt for the
10 victimization you have suffered. And when considering
11 whether it's a hundred years or 80 or 60 or 40, which
12 are all close to life sentences, it may be worth
13 considering how an ultimate judgment as to which of
14 those period of years is right will impact the victim.
15 Isn't it something I should at least consider?

16 MS. FITZGIBBON: Yes, I would agree that you
17 can consider that, should consider that, your Honor.

18 THE COURT: Okay. So, I mean we will hear
19 from the defendant. So maybe that's perhaps what I
20 should do, is give defense counsel an argument, he's
21 arguing for I think a 15-year sentence, let him make his
22 argument, then you can respond to it. But I have to say
23 I think, despite your attempt to come up with a
24 mechanical justification for a hundred years, I'm not
25 faulting you. It's an arbitrarily chosen number that is

1 vastly in excess of the defendant's lifespan, and I'm
2 not convinced that I should simply accept it. So we
3 will see what the defendant has to say and then we will
4 move on from there.

5 MR. MOIR: Thank you, your Honor. I'll just
6 go to the podium. My eyes are not as good as they used
7 to be.

8 I guess I want to start that what I'm saying
9 here is not meant to justify, to excuse, even to
10 explain. There's no question that the court knows, and
11 everyone in this courtroom here, knows that the actions
12 that Lisa Biron took were certainly morally
13 reprehensible. I mean she's a mother and she completely
14 abdicated her responsibility as a mother. I mean, she
15 led her daughter into situations which, for the daughter
16 in so many ways, were extremely dangerous and extremely
17 harmful. Again, it's not an excuse, it's not a
18 justification, and under the law she of course must be
19 punished.

20 The moral is off the charts, your Honor.
21 There's no question about it. I think everyone who
22 knows about this case has been shocked that a mother can
23 do this. I want to acknowledge that and somewhat set
24 that aside and look at the criminal though.

25 Under the law the court is --

1 THE COURT: Well, my job is to sentence in
2 accordance with the sentencing statute. So let's set
3 aside the term moral for the moment.

4 MR. MOIR: All right.

5 THE COURT: Let's look at what is the relevant
6 consideration which is a just sentence. Deal with it in
7 that term.

8 MR. MOIR: The only reason I bring up the
9 moral, your Honor, is that absolutely anybody I've
10 talked to about this case has said, oh, my God, how can
11 a mother do that? And that really to a great degree is
12 --

13 THE COURT: Yeah, but this sentence is not
14 going to be about sexual promiscuity, alcohol and drug
15 abuse. This is going to be a sentence based on the
16 counts of conviction and the victimization that was
17 reflected in those counts of conviction. And the
18 primary hurdle for you is not to -- I don't think you
19 can separate out the concept of a just sentence from
20 what you call the criminality. Set aside morality, but
21 just sentence requires me to take into account the
22 seriousness of the wrongs that have been done here.

23 MR. MOIR: I agree, your Honor, and I
24 certainly don't say that you should not consider that.

25 As the court knows so well, punishment that's

1 to be imposed is to be sufficient but not greater than
2 necessary to comply with the purposes of sentencing.

3 Having said that, my central argument in this
4 is that of course there's no doubt that Lisa Biron's
5 actions were highly criminal. They deserve punishment.
6 Again, she abdicated responsibility. But what is the
7 appropriate punishment? As the court has noted, the
8 state has requested a sentence of a hundred years. And
9 as I think the court has pointed out as well, that's a
10 life sentence. Many sentences less than that would in
11 effect be a life sentence. And so the question is --

12 THE COURT: Well, if I were going to impose a
13 hundred-year sentence, I would simply impose a life
14 sentence.

15 MR. MOIR: And I think that would probably be
16 appropriate because a hundred-year sentence, we're
17 dealing with almost old testament lifespans at that
18 point. Doesn't make a lot of sense.

19 But the first thing I'd like to look at, your
20 Honor, is what the defendant did in this case. What
21 were the charges. What did she do.

22 As the court knows, the main count number one
23 is transporting your child to Canada. Staying in a
24 hotel for three days. Her daughter having sex, sex for
25 the first time with this gentleman Kevin up there who

1 testified. Prior to that he was sort of her online
2 boyfriend, virtual boyfriend, then the real boyfriend.
3 And during the course of that time Ms. Biron transported
4 her up for this purpose, and then when up there takes
5 three videos and one still picture which the court saw.

6 THE COURT: You want to deal with this in an
7 atomistic way, but you tell me whether my take on this
8 is right or not. My take on this is that your client
9 used the victim as bait for her own personal sexual
10 gratification. She used it as a way to lure young men
11 into having sex with her, and by using her child as an
12 object, an inhuman object to exploit so that she could
13 pursue her interest in sexual gratification with young
14 men. That's my take having sat through the trial. Is
15 that wrong?

16 MR. MOIR: I think we have lots of different
17 interpretations, your Honor. I'm not saying --
18 obviously that's the court's interpretation of this. I
19 find what happened, again, as pointed out in the
20 evaluation that was provided, something that was quite a
21 bit less conscious or premeditated than that.

22 THE COURT: Well, it is true that she,
23 according to the reports, led a very sexually
24 promiscuous lifestyle as a young woman, and she wanted
25 to get back to that. And the way she could get back to

1 it as a 40-year-old woman who is interested in having
2 sex with 19, 20-year-old boys is to place an
3 advertisement on Craig's List for have sex with a, what
4 was it, 38-year-old woman and her 19-year-old roommate.
5 That looks like a lure to young men. Come to my house
6 so that we can have sex, and you can have sex with the
7 19-year-old roommate while you're there. That's why I'm
8 thinking this. She proposes going up to Canada. And
9 she has sex with the boy in the room. Isn't that what
10 this was all about?

11 MR. MOIR: You see, I don't think it was so
12 conscious and so planned and premeditated. The way I
13 look at it, your Honor, and I think it was pointed out
14 in my sentencing memo as well as in the psychological
15 evaluation, where Ms. Biron had been attempting to lead
16 a good life. She had abandoned that prior life and for
17 ten years managed to hold things together. I suggest to
18 the court it was an incredibly fragile structure she put
19 together. And then when her husband leaves, she has the
20 problems, stressors in her life, and once she starts
21 drinking, she starts going down the rabbit hole. And I
22 don't think what was happening there were a lot of
23 things that were conscious. I think that she was doing
24 this, there's no question about it, all those things you
25 talk about, but I don't think it was like, oh, let me

1 hold my daughter out here as bait so I can, I don't
2 think it was that conscious.

3 THE COURT: Well, I think your expert does not
4 in any way suggest that she suffers from any kind of
5 psychological disorder that prevented her from being
6 able to make rational and informed calculations. I do
7 agree with you, however, that she was -- she committed
8 these crimes during a period of extraordinary stress in
9 her life. She had been abandoned by her husband. She
10 had, was experiencing extraordinary financial
11 difficulty. She lapsed into drug use and alcohol use,
12 and these crimes followed that descent. And I will also
13 acknowledge that she had a period of about a decade in
14 which she was extremely religiously observant and as far
15 as we can tell not engaging in any criminal activity
16 during that ten-year period. And this series of events
17 follow from that. I will acknowledge all of that. But
18 frankly I can't see much in there that really suggests
19 anything mitigating about the conduct.

20 MR. MOIR: Well, as I've indicated to the
21 court before when I started off, I'm not trying to offer
22 this to justify or excuse.

23 THE COURT: No, and I appreciate that.

24 MR. MOIR: It really isn't, because there is
25 no justification or excuse. What I'm trying to do is

1 put it in some larger concept. Because the court said,
2 we're looking at this holistically. I know you're
3 looking at sentences, but I'm looking at the person as
4 well to try to maybe understand a little bit. And so
5 I'm not trying to break these out, you know, bit by bit,
6 because I think if we look at the whole picture with
7 that understanding at least, I think that would lead us
8 to what would be a just sentence in the case.

9 If I could just go on. The court knows that
10 the videotapes that were taken up in Canada were all
11 very brief, and I think even the government agrees never
12 were meant for distribution. Same goes with the --

13 THE COURT: Can you refresh my recollection as
14 to, I agree with you that there's no evidence that they
15 were distributed over the Internet, that they were sold,
16 that they were intended for mass viewing, none of that
17 that I'm aware of. I do recall testimony about them
18 being shown to individuals with whom she was either
19 wanting to have sex or trying to develop a sexual
20 relationship. Can you refresh my memory about that?

21 MR. MOIR: Yes. I believe the person you're
22 talking about is Brandon Ore who testified in the case.
23 He was already involved in a sexual relationship with
24 the daughter, and he testified that at one point he was
25 shown I believe one of the videos. And that's because

1 it had a, I'll put it, quote, a comic noise that came
2 off, and that's why it was shown. And it was --

3 THE COURT: Your point is she was just taking
4 these for her own personal purposes.

5 MR. MOIR: Even as it says in the
6 psychological evaluation, it was done as a sort of
7 warped memento. That's really what I would call it.
8 That's how it was explained. Because if you wanted to
9 create a porno, so to speak, your Honor, you're not
10 going to do a 34-second clip of, you know, of the action
11 going on and one can hear the laughter, and I suggest
12 you can hear the drunkenness too going on. These things
13 were just little clips made for whatever perverse
14 purpose. But the purpose was again, not to distribute,
15 not to sell, not to post on the Internet, nothing like
16 that. They were kept as a memento of some sort. And
17 the same goes for all the videos, your Honor. And so
18 when I look at this, I say all right, had she not taken
19 the videos, let's say she did everything else but the
20 camera never came out in any of these situations, she
21 would have committed a number of federal crimes right
22 there. She certainly would have with the
23 transportation. No question about that. She certainly
24 would have had a sexual assault with her own actions.
25 Those kind of things. And if I look at those, and I put

1 this in my sentencing memorandum, if you took away the
2 videos which of course are the bulk of the offenses
3 here, where would we have ended up? We certainly
4 wouldn't be ending up at a life sentence. Under the way
5 I quickly calculate under the guidelines, we'd probably
6 be looking more like 10 or 12 years, the worst case
7 scenario on those.

8 THE COURT: Well, under the guidelines, but
9 that doesn't take into account the crimes she has
10 committed in this particular case.

11 MR. MOIR: I understand. But all I'm trying
12 to make the point here, your Honor, that these videos
13 that were made were all very brief, none meant for
14 distribution, none for commercial activities, nothing
15 like that. And it is those videos, those crimes that
16 were committed, take this from a 10, 12-year sentence
17 and go up to, as the government would like, a hundred-
18 year sentence or a life sentence, it's those things
19 which I think you total them altogether are maybe five
20 minutes, again were not meant for distribution, nothing
21 else but sort of a strange memento.

22 The reason I'm pointing this out, your Honor,
23 is that I am asking a 15-year sentence. And what that
24 does is takes those videos there and adds on, I would
25 submit, at least three or four years on to the

1 underlying offenses for the videos, if the court
2 understands what I'm saying here.

3 THE COURT: I understand what you're saying.
4 But I also, as I don't accept the government's
5 mechanistic approach which seems to calculate the
6 hundred years by trying to view each count of conviction
7 with blinders on, I also don't accept your view that I
8 should look at the, each offense in kind of a mechanical
9 fashion in light of what the elements of that offense
10 are, and in short, the inconsequential of the making of
11 the videos are. To me that's almost beside the point
12 here. We look at, I believe I'm entitled to consider
13 the course of conduct for which the defendant was
14 convicted here. And in considering what a just sentence
15 is, I need to consider what it is she did. And that's
16 what, to me, what she did, and if you think this
17 inference is unsustainable from this record or that it's
18 improper for me to consider it this way, you need to
19 tell me. But what she did was embark on a pattern of
20 conduct in which to satisfy her own interest in having
21 sex with young men, she chose to use her vulnerable
22 daughter and exploit her by engaging in -- having her
23 engage in sexual acts with other men and filming those
24 acts in a way that used her to achieve an end for her,
25 Ms. Biron, which is just sexual gratification. She

1 wanted to have sex with young men and this was the way
2 she figured out how she could do it, and she was willing
3 to do what was necessary to achieve those ends.

4 Let me ask the prosecutor. Am I
5 misunderstanding what this case is all about from your
6 perspective?

7 MS. FITZGIBBON: Your Honor, I think you have
8 a large part of it and I think there's even more because
9 of course there's also the defendant's own sexual
10 assault of her daughter.

11 THE COURT: Well, I don't want to diminish
12 that, but in my mind, that again is part of the
13 recruitment effort to use her -- what I think is going
14 on here, in the defendant's history, you don't have
15 history of her showing interest in molesting teenage
16 girls, and you don't have evidence showing she has
17 involvement in lesbian sex except to the extent it's
18 involved in group sex. The primary driver of all this
19 seems to be, to me, wanting to use her daughter, make
20 child pornography with her daughter, take her up to
21 Canada, have sex with young men, so that she, Ms. Biron,
22 can have sex with young men.

23 MS. FITZGIBBON: Yes, your Honor, we would
24 agree that yes, that she totally objectified this child
25 in her own hedonistic pleasure and a way to be around

1 19, 18, 20-year-old young men, absolutely.

2 THE COURT: Okay. You will get a chance. Go
3 ahead.

4 MR. MOIR: I'm not disagreeing with the
5 court's interpretation. The court could see it this
6 way. The one thing that comes out, though, is if you
7 look at the videos that were taken, they were not made
8 in furtherance of the end as the court points out. They
9 were incidental to that. If she wants to have sex with
10 men, I think if the courts looks at the facts of this
11 case, those videos had nothing to do with recruiting
12 men, getting men in the house, anything like that. As
13 the court points out, Craig's List, yes, that had a lot
14 to do with it. The PSR talks about a lot of those
15 things. But the videos that were taken here were
16 completely incidental to all that. They weren't used as
17 a lure or anything like that. That's not to say they're
18 not crimes, of course they are, that's what she was
19 convicted of. But I'm just trying to put these videos
20 themselves in context because in effect the creation of
21 all those videos, those are the things that make the
22 sentence in the case, under the guidelines, so
23 astronomical.

24 THE COURT: Not under the statutory scheme.
25 It's the taking her across the line to Canada that makes

1 it eligible for a life sentence.

2 MR. MOIR: It does, it does, but if you look
3 at the minimum on that, that minimum is less, it's ten
4 to life versus the other one which is 15 to 30. I'm
5 trying to put the videos in context here, your Honor.
6 They were not the lures. They had nothing to do with
7 that. They were again -- you saw them. You saw how
8 they were short, they were drunken, they were -- I
9 shouldn't use the word jokey, but they were, if you look
10 at that, and as bad as they are, that's the point they
11 were made. It's like some drunken kids with an iPhone.

12 THE COURT: Well, the ones in Canada were.

13 MR. MOIR: Yes.

14 THE COURT: The one of her having oral sex
15 with her daughter wasn't. That wasn't jokey.

16 MR. MOIR: I don't disagree with that. In any
17 event, your Honor, looking at 2G2.1, which is where we
18 were looking under this as far as sentencing guidelines,
19 that does cover a wide range of offenses. It covers not
20 only sexual exploitation of children but also sex
21 trafficking in children, production of sexually explicit
22 depictions of minors for importation. I mean, the
23 heartland of that is looking at those in the business of
24 producing child pornography for profit, for commercial
25 and for distribution. I agree --

1 THE COURT: We don't have that here. I'm not
2 sentencing her as a person who's trying to engage in the
3 production of child pornography for profit.

4 MR. MOIR: Right.

5 THE COURT: I'm not considering that at all.

6 MR. MOIR: And what I'm stating this for is
7 that a maximum sentence should be reserved for, again,
8 the worst possible variation of the crime and the most
9 dangerous offenders. I'm not --

10 THE COURT: I guess I'm having trouble seeing
11 why this isn't one of the worst possible variations of
12 the crime given the betrayal of trust that was involved.

13 MR. MOIR: It is a betrayal of trust, your
14 Honor, there's no question about it, and no question
15 damage is done. I'm not disagreeing with the court on
16 that. But every case like this is going to have,
17 whether it's a stranger or a mother or anything else, is
18 going to have those elements involved.

19 THE COURT: You see, when being victimized by
20 her mother under circumstances that leaves her feeling
21 guilty for her own victimization, you get at the heart
22 of what this crime is all about and why it is so
23 egregiously wrong and why a just sentence calls for a
24 very substantial period of incarceration. It isn't
25 because she was going to go into the business of

1 producing videos for profit to sell on the Internet. It
2 was that she was willing to use her daughter as an
3 object to achieve sexual gratification for herself and
4 committed these crimes to that end, in a way that
5 betrayed a fundamental trust and left her daughter
6 extraordinarily harmed and feeling guilty for her on
7 victimization. That's the harm.

8 MR. MOIR: I don't disagree that's the harm.
9 But the question then comes down to, we have a person
10 who, as the court knows, has no criminal history, is
11 looking at a prison sentence, even what I'm requesting
12 of course which is the statutory minimum, of 15 years,
13 which is an incredibly substantial period of time. And
14 I don't pretend to speak for the victim here. I don't.
15 I don't have any contact with her. I have heard via the
16 court what her position is here. But if we're worried
17 about further harm to the victim by this defendant, even
18 under 15 years she will have long been an adult and
19 there can't be any harm, further harm caused by this
20 mother to her daughter. I don't think there's any
21 evidence here, your Honor, that this defendant poses a
22 harm to other people out on the streets. In fact, with
23 supervision and with counseling, with this kind of thing
24 which certainly supervision will be required, reporting
25 all those things, I submit that she will not be a danger

1 to the community.

2 Obviously the court has other things to
3 consider when we're talking about sentencing.
4 Seriousness of the offense, respect for the law, those
5 kind of things. The way I'm looking at this, your
6 Honor, yes, it's serious, serious, serious. A 15-year
7 sentence is extremely serious, particularly somebody who
8 has never been to court before, never been to jail
9 before.

10 I guess I'm submitting at the end of the day,
11 your Honor, that under the sentencing provisions of
12 U.S.C Section 3553(a), that a 15-year sentence in this
13 case is sufficient and it is not greater than necessary
14 to achieve the purposes of sentencing. That's my
15 argument. Thank you.

16 THE COURT: You want to respond?

17 MS. FITZGIBBON: Yes, your Honor. I do think
18 that there's been an attempt to minimize and in even
19 using the term jokey with these films. There's nothing
20 jokey about these films and --

21 THE COURT: I hope you understand, I fully
22 understand that I think he is referring to the fact that
23 while they were the, the victim was in the film, there
24 were various times where they were laughing over things
25 that were somewhat embarrassing to them while they were

1 making the film, and that's all that -- I know that Mr.
2 Moir isn't in any way trying to suggest that this was
3 lighthearted or anything else.

4 MS. FITZGIBBON: And Mr. Moir may not be but
5 the testimony you heard at trial was the defendant
6 definitely did laugh about them, and she laughed about
7 them on numerous occasions. She laughed about them when
8 she is showing them to other people. When she showed
9 them to Brandon Ore, she particularly pointed out that
10 embarrassing moment the child has on the video and made
11 him laugh.

12 When Mr. Hardy, the self-admitted Crip
13 testified, he said that he heard her showing it and
14 laughing.

15 So, not only did she objectify her daughter in
16 the creation of the film, then she repeatedly used them
17 to get -- because they just continued to amuse her. And
18 I would suggest, your Honor, and just for the record,
19 there were clips shown to the jury for certain, we
20 narrowed that evidence as appropriate for presentation
21 to the jury, I don't have off the top of my head the
22 exact minute for each of those videos, but they were not
23 as short as shown to that jury. And Count Seven is a
24 seven-minute long video. You have seen many cases
25 prosecuted here where the clips are much, much shorter.

1 Seven minutes in child pornography is a very long video.

2 THE COURT: I don't attach any special
3 significance to the length of the clips. You want to
4 respond to his argument -- one of his arguments is that
5 the principal purpose driving the lengthy sentences for
6 production is to try to get at people who are
7 commercially exploiting child pornography for financial
8 gain, and this isn't one of those cases he argues, and
9 therefore it is inappropriate to treat it as among the
10 more serious kinds of child pornography manufacturing
11 cases one can have. Would you -- I suggested a response
12 to that. The response to that is because of the
13 betrayal of trust here and the damage done to the victim
14 by her own mother exploiting her for personal sexual
15 gratification, that the damage here is particularly
16 egregious and does make this one of the more serious
17 types of child pornography production offenses one can
18 have, even though there was no intent to commercially
19 exploit. Do you have any additional response that you
20 want to offer on that?

21 MS. FITZGIBBON: I would say in addition to
22 that and in addition to the harm, yes, your Honor. Not
23 only, even notwithstanding no commercial distribution,
24 this is one of the worst cases this court has ever seen,
25 at least in my 15 years of prosecuting child --

1 THE COURT: Well, I mean, Judge McAuliffe
2 recently sentenced someone who was a bus driver of
3 people who were developmentally disabled I believe.

4 MS. FITZGIBBON: Yes, your Honor.

5 THE COURT: And were sexually abusing them and
6 making films of that. That arguably tops this one in
7 terms of the, just the complete egregiousness of the
8 offense, but this certainly is -- and I had one with you
9 where you were arguing for a much lower sentence of
10 someone who exchanged sexual abuse of their own child
11 videos with another pedophile in discussions where they
12 would come together and go to Vermont to go to a
13 shopping mall to kidnap a child and abuse them, and you
14 asked for a lower sentence, much lower sentence in that
15 case than this one.

16 MS. FITZGIBBON: On that other pedophile,
17 there were both evidentiary issues as well as other
18 concerns and different statutory sentences in play at
19 the time. But in this case, your Honor, and I'm asking
20 you to look at not just the episodes, it's bad enough
21 the episodes of child pornography here, but the
22 overwhelming picture that you've been presented, and
23 even your Honor doesn't still have all of the
24 information that could have been presented with regard
25 to the --

1 THE COURT: Well, if you think I should have
2 more information than I have, you should give it to me.

3 MS. FITZGIBBON: All I'm saying, your Honor,
4 is at some point there had to be a stop. There was an
5 overwhelming house of danger and depravity that was
6 getting worse each day, starting with Brandon Ore who
7 came to visit and was told, your Honor very correctly
8 pointed out, he was told you can come back and have sex
9 if you bring a friend. He was used to bring more young
10 men into that house.

11 So there's the ongoing harm that's getting
12 worse every day. More drugs, more alcohol, more
13 dangerous people.

14 THE COURT: One thing that is -- that we
15 haven't mentioned that in my mind was quite upsetting
16 during the course of the trial were the defendant's
17 recorded telephone calls at the prison in which it was
18 suggesting, she was suggesting in those calls, again,
19 trying to shift blame to her own daughter for the abuse
20 that she inflicted on her daughter. Is that a
21 legitimate factor that I can consider in sentencing the
22 defendant?

23 MS. FITZGIBBON: Absolutely. And it's in our
24 sentencing memorandum, yes, that it was -- at one point
25 there's even a statement with expletives that it's not

1 my fault, it's her fault, she met that kid in Canada.
2 Well, in fact, the victim did meet the young boy on
3 Skype, and when Ms. Biron discovered it, then she had to
4 engage in a sexual relationship. And as she told in the
5 psychologist report, it was her idea, let's go to
6 Canada, and she related to other friends, so we took
7 ourselves up to Canada. She met this young 19-year-old
8 and decided she wanted a sexual relationship with him as
9 well, and let's bring the child up there and engage in
10 this child pornography production.

11 So yeah, that wasn't the only phone call we
12 played for you at trial. And even after the commission,
13 this is I wasn't criminally responsible, I didn't intend
14 anything. Well, she picked up a camera and walked
15 around. That clip includes a narration of the room, I
16 mean, we showed a smaller clip, your Honor, but that
17 film is here we are in Canada, here's the room, here's
18 the drugs, here's the booze. I mean --

19 THE COURT: That attempt to shift blame even
20 after she had been arrested and the existence of
21 overwhelming evidence of her guilt, to continue to try
22 to place blame on the victim for her own victimization
23 of the child is really quite troubling to me.

24 MS. FITZGIBBON: Yes, your Honor, and I note
25 that I think we didn't touch on this, but the acceptance

1 of responsibility argument was --

2 THE COURT: I think you must have abandoned
3 that because you didn't pursue it.

4 MS. FITZGIBBON: Yes. Because you're right,
5 there has never been an acceptance at all of the
6 criminal responsibility. In fact, there's been a
7 shifting to the victim herself during the course of
8 this. And there was also the, you know, I also think
9 the court should very much take into consideration the
10 young people drawn into this crime. Now, Brandon Ore
11 and Kevin Watson, 18 and 19 years old respectively, so
12 they are technically adults, and they are not without
13 some criminal culpability here, but they are lured into
14 a world of drugs, drinking, and becoming part of one of
15 the worst felonies possible, creating child pornography.

16 THE COURT: I'm not sure that I would increase
17 the defendant's sentence length because she was involved
18 with other adults even though they were young adults. I
19 agree that, while I don't know what the laws are in
20 Canada with respect to alcohol, but clearly she was
21 providing access and places where drugs and alcohol
22 could be consumed by people who couldn't legally do
23 that. But to me I'm not sure that it would be
24 appropriate to give a longer sentence because these
25 adults, although young adults, were involved with her in

1 these activities.

2 MS. FITZGIBBON: I would ask, though, your
3 Honor, that though you have identified the primary harm
4 here, the complete and utter abandonment and trust and
5 the criminal exploitation of this child, that when you
6 are considering a sentence under the protection of the
7 public and other factors to take into account, it's very
8 worth noting the kind of lifestyle, the exact
9 circumstances that was going on at the Biron residence
10 during that time. That was a house that daily was full
11 of strange men, anonymous men coming and going, alcohol,
12 drugs, a loaded weapon, and a child in the house at the
13 time. I mean, she was creating a very dangerous
14 situation. As she tells the psychologist, the guys show
15 up, announce themselves as Crips. She says get out, but
16 then says, all right, come in, and then engages in a
17 four-way sex act with them while the child is in the
18 house. That's a danger to the community going on. You
19 have Crips walking into the house where you have drugs,
20 a loaded weapon, and this kind of criminal activity
21 taking place.

22 THE COURT: Again, I'm not sure that would
23 affect my sentencing judgment in any substantial way.
24 But in your memorandum there are many other additional
25 pieces of evidence regarding her involvement with the --

1 of the victim with sex with multiple men, and I think
2 that exploitation of the victim clearly suggests that
3 this conduct was not a product of isolated poorly
4 thought out spontaneous action. This was part of a
5 deep-seated pattern in which the defendant engaged in a
6 number of carefully planned acts to, again, to pursue
7 her own interest in sexual gratification through sex
8 with young men by using her daughter as a lure to
9 attract them and to have sex with them when she
10 otherwise wouldn't have been able to attract them to
11 have sex with them. That seems to be what the case is
12 primarily about.

13 MS. FITZGIBBON: I believe her words were,
14 your Honor, to the therapist, it was like a hunt. It
15 was fun. Yes.

16 THE COURT: All right. Thank you. Did you
17 want to present, I'm going to have to -- I want to play
18 the victim impact statement. Is there any additional
19 evidence that you want to present?

20 MR. MOIR: No, actually, I would stand upon
21 the arguments that are made in the sentencing memorandum
22 and I think that's sufficient.

23 THE COURT: All right. Thank you. Have we
24 been able to set that up to play?

25 THE CLERK: I think so, your Honor.

1 THE COURT: Okay.

2 MS. FITZGIBBON: It will just take a moment,
3 your Honor.

4 THE COURT: Vinny, can you help her. She's
5 not able to connect to our system.

6 THE CLERK: Sure, your Honor, I'm just making
7 sure we have the sound up all the way.

8 (Pause.)

9 THE COURT: This is going to take a while, so
10 why don't we take a little pressure off of you by taking
11 a break, and when you get it functioning, maybe we can
12 bring in a different laptop that has a more powerful
13 sound card in it or something. The laptop itself should
14 be able to broadcast at a higher volume than that.

15 MR. CHIAVARAS: Your Honor, it is, but the
16 audio itself is very low.

17 THE COURT: It was poorly made you mean?

18 MR. CHIAVARAS: Yes, the audio on the video
19 itself is low. So if we can, I'd like to try to hook it
20 up to a different input in our court system and that
21 might --

22 THE COURT: Let's take a short break and we'll
23 come back when it's ready to go.

24 (Recess taken.)

25 (Victim impact statement being

1 played.)

2 THE COURT: All right, Ms. Biron, you have an
3 opportunity to speak if you want to. You don't have to
4 say anything. I won't hold it against you if you don't.
5 If there is anything you want to say, I'll be happy to
6 hear it. Did you want to say anything?

7 MR. MOIR: She as a brief statement, your
8 Honor.

9 THE DEFENDANT: Thank you, your Honor. In
10 July of 2011 my world crashed and I fell apart. Dr.
11 Burnes called it a synergistic meltdown with regression.
12 I still don't understand it and I can't explain it. I
13 was completely out of control and drinking about a half
14 gallon of whiskey every other day. I have failed as a
15 Christian and as a Christian mom. Being separated from
16 my daughter is the greatest pain that I have ever felt.
17 Baby, I am so sorry.

18 THE COURT: All right. Did anybody want to
19 say anything else before I impose sentence?

20 MS. FITZGIBBON: No, your Honor.

21 THE COURT: Let me just review with the
22 probation officer. Count One is ten years to life.
23 Counts Two through Seven are 15 years to 30.

24 PROBATION OFFICER: That's correct, your
25 Honor.

1 THE COURT: And Count Eight is what?

2 PROBATION OFFICER: Zero to 10 years.

3 THE COURT: Ten max, okay. All right, I need
4 to say that I'm going to give a sentence of 40 years
5 here, and let me explain my thinking.

6 First, I am unpersuaded by the defendant's
7 arguments for a variance. I respect counsel and I
8 commend counsel here who has been appointed to represent
9 the defendant. I think you have performed your duties
10 admirably. You've been of help to the court and I
11 couldn't ask for more from you. But I am ultimately not
12 persuaded by the arguments that you have presented here.

13 I find very little in the defendant's
14 background to be worthy of mitigation here. I recognize
15 that she had drug and alcohol problems. I recognize
16 that she was experiencing great stress in her life. And
17 I know you didn't argue that those were excuses. But
18 you were presenting them in part in support of an
19 argument for a variance. And I don't believe that they
20 were present to a degree that would in any way support a
21 variance here.

22 As I said, I think that this is an
23 extraordinarily egregious pattern of criminal behavior,
24 and I can think of very few patterns of behavior that
25 are more serious than that. I think the damage that you

1 have done to your daughter is incalculable. I think the
2 indifference that you showed her is shocking to me.
3 That you were willing to exploit her for your own
4 personal sexual gratification is shocking and it makes
5 your crime so serious and requiring such a lengthy
6 sentence.

7 So, I am not persuaded by any of the arguments
8 for variance. I recognize that this is not a case that
9 involves commercial distribution of pornography, but I
10 believe that it is otherwise an extraordinarily serious
11 course of criminal conduct that does require a very
12 substantial period of incarceration.

13 In looking at the sentencing statute my
14 primary concern in this case is achieving a sentence
15 that is a just sentence. And a sentence of 40 years is
16 equal, in my view, and not greater than necessary to
17 achieve the purposes of the sentencing statute in
18 arriving at a just sentence. I simply cannot support
19 the view that any sentence less than 40 years would do
20 justice to this course of criminal conduct.

21 I understand the government's point, that a
22 sentence of longer than 40 years should be required. In
23 practical terms I think the government would acknowledge
24 there's not much practical difference between a 40-year
25 and a hundred-year sentence in this case. The defendant

1 is 43 I believe. Even with good time credit she will be
2 well into her seventies before she would be eligible for
3 release. And I respect the fact that a life sentence
4 could be asked for here and could be given.

5 I'm not imposing a life sentence and I'm
6 varying from that life sentence primarily for one
7 reason. And that is I believe that it's important that
8 the victim in this case know that I have heard her. In
9 my view she has been so seriously harmed by her mother.
10 So seriously damaged. She has so much work to do to
11 recover from that victimization that we need to be
12 sensitive to things that may aid in that process. And I
13 think, having watched this video, I think it's important
14 that she know that the judge heard her. She's at an age
15 where she feels that it's important to be heard. She
16 wanted to address me. She wanted me to hear her. And I
17 want her to know that I heard her. Because I think that
18 will be helpful to her in her rehabilitation. Over time
19 I hope she will come to see the truth, which is that her
20 mother is the victimizer and she is a completely
21 innocent victim. But I want right now to help her deal
22 with that guilt, and I want her right now to know that I
23 take her concerns seriously, and to some extent I have
24 tried to address those concerns. Now, I'm not willing
25 to cede the responsibility I have to the public to

1 insure that a just sentence is imposed in this case. In
2 other cases where victims, minor victims have expressed
3 requests for leniency, if you will remember the case of
4 the Internet gamer, what was the game, World of Warcraft
5 case, there the child victim wanted to have a continued
6 relationship with the defendant who was taking her, had
7 her kidnapped to abuse her, and I would not impose a
8 lighter sentence there because it was quite clear to me
9 that I would be harming her by doing so. So I'm not
10 ceding responsibility to the victim here. I'm
11 recognizing that my principal responsibility in
12 sentencing is to insure that the public interest in a
13 just sentence is vindicated. That society is protected
14 from the defendant. That the general deterrent
15 considerations that underlie the sentencing statute are
16 enforced. But I do think on the margin, in a case like
17 this, a victim's interest should be considered in my
18 judgment and I recognize it can be debated. Showing her
19 that I am taking into account her concerns to this small
20 degree will in my judgment be beneficial to her.

21 And so for that reason I am going to vary from
22 the life sentence called for by the guidelines and
23 instead impose a sentence of 40 years, which is
24 480 months?

25 PROBATION OFFICER: That's correct, your

1 Honor.

2 THE COURT: Does anybody need me to explain
3 further my sentence in this case?

4 MS. FITZGIBBON: No, your Honor.

5 MR. MOIR: No, your Honor.

6 THE COURT: All right. Let me read the
7 proposed sentence:

8 Pursuant to the Sentencing Reform Act of 1984
9 it is the judgment of the court the defendant Lisa Ann
10 Biron is hereby committed to the custody of the Bureau
11 of Prisons, to be in prison for a term of 480 months on
12 -- Count One is the life sentence count?

13 PROBATION OFFICER: Yes, your Honor.

14 THE COURT: 480 months on Count One. And
15 360 months on Counts Two through Seven. Those are
16 30-year counts?

17 PROBATION OFFICER: Yes.

18 THE COURT: To run concurrent, all this is to
19 run concurrent.

20 PROBATION OFFICER: Yes, your Honor.

21 THE COURT: And 10 years on --

22 PROBATION OFFICER: 120 months on Count Eight.

23 THE COURT: 120 months on Count Eight.

24 PROBATION OFFICER: Yes.

25 THE COURT: All such terms to run

1 concurrently. This produces a total sentence of
2 40 years.

3 Much of the rest of this sentence is required
4 that I impose, even though I recognize practically there
5 will not be any substantial likelihood of release under
6 these conditions, but in the event that the defendant
7 were to be released on supervised release, the defendant
8 shall be placed on supervised release for a term of life
9 on each of Counts One through Eight, all such terms to
10 run concurrently.

11 Within 72 hours of release from the custody of
12 the Bureau of Prisons the defendant shall report in
13 person to the probation office in the district to which
14 the defendant is released.

15 While on supervised release the defendant
16 shall not commit another federal, state or local crime,
17 shall comply with the standard conditions that have been
18 adopted by this court, and shall comply with the
19 following additional conditions:

20 The defendant shall not illegally possess a
21 controlled substance.

22 The defendant shall not possess a firearm,
23 destructive device or any other dangerous weapon.

24 The defendant shall submit to DNA collection.

25 The defendant shall refrain from any unlawful

1 use of a controlled substance.

2 The defendant shall submit to one drug test
3 within 15 days of placement on supervision and at least
4 two periodic drug tests thereafter, not to exceed 72
5 drug tests per year of supervision.

6 The defendant is required to register
7 initially and to keep this registration current in each
8 jurisdiction where the defendant resides, works and
9 attends school.

10 In addition, for initial registration purposes
11 only, the defendant must register in the jurisdiction
12 where she's convicted if she does not reside in the
13 jurisdiction. The defendant must initially register
14 before completing imprisonment.

15 The defendant shall pay any financial penalty
16 that is imposed by this judgment and that remains unpaid
17 at the commencement of the term of supervision.

18 The defendant shall comply with the following
19 special conditions:

20 The defendant shall participate in a program
21 of mental health treatment as directed by the probation
22 officer until such time as the defendant is released
23 from the program by the probation officer. The
24 defendant shall pay for the cost of treatment to the
25 extent she's able as determined by the probation

1 officer.

2 The defendant shall participate in a sex
3 offender assessment as directed by the supervising
4 officer.

5 The defendant must participate in a
6 specialized sex offender treatment program. The
7 defendant shall pay for the cost of treatment to the
8 extent she is able as determined by the probation
9 officer.

10 The defendant must submit to polygraph
11 examination as a containment strategy for the management
12 of sex offenders.

13 The defendant may not use sexually oriented
14 telephone numbers or services.

15 The defendant shall not directly or indirectly
16 contact the victim or any persons under the age of 18
17 except in the presence of a responsible adult who is
18 aware of the nature of the defendant's background and
19 current offense and who has been approved by the
20 probation officer.

21 The defendant shall neither possess nor have
22 under her control any material depicting sexually
23 explicit conduct as that term is defined in 18 U.S.C
24 Section 2256(2) involving adults or children. This
25 includes but is not limited to any matter obtained

1 through access to any computer or any material linked to
2 computer access devices.

3 The defendant may not loiter within 100 yards
4 of any schoolyard, playground, swimming pool, arcade or
5 any other such place frequented by children.

6 The defendant shall consent to a third-party
7 disclosure to any employer, potential employer,
8 community service site, or other interested party as
9 determined by the probation officer of any computer-
10 related restrictions that are imposed.

11 The defendant is barred from the use of the
12 Internet and all other media devices with interactive
13 computer service as defined in 42 U.S.C Section 230(f)
14 without the prior approval of the probation officer.

15 The defendant shall consent to and cooperate
16 with unannounced examinations of any computer owned or
17 controlled by the defendant which may result in
18 retrieval and copying of all data from the computer and
19 any internal or external peripherals and may involve
20 removal of such equipment for the purpose of conducting
21 a more thorough inspection.

22 The defendant shall submit her person,
23 residence, office or vehicle to a search conducted by a
24 U.S. probation officer in a reasonable time and in a
25 reasonable manner based upon reasonable suspicion that

1 contraband or evidence of a violation of condition of
2 release may exist. Failure to submit to a search may be
3 grounds for revocation. The defendant shall warn any
4 other residents that the premises may be subject to
5 searches pursuant to this condition.

6 The defendant shall maintain a complete
7 current inventory of her computer access including but
8 not limited to any bills pertaining to computer access,
9 telephone bills used for modem access, or other charges
10 accrued in the use of a computer.

11 The defendant shall submit a monthly record of
12 computer use and bills to the probation officer and
13 shall provide the probation officer with any online
14 screen names or passwords she uses.

15 The defendant shall not use any software
16 designed for the purpose of encryption or wiping
17 computer disk spaces and/or drive.

18 The defendant shall consent to the
19 installation of a system that will enable the probation
20 officer or its designee to monitor computer use on any
21 computer owned or controlled by the defendant. The
22 defendant shall pay for the cost of installation of such
23 system to the extent she is able as determined by the
24 probation officer.

25 The defendant shall pay to the United States a

1 special assessment of \$800 that shall be due in full
2 immediately.

3 The court finds that the defendant does not
4 have the ability to pay a fine, the court will waive the
5 fine in this case.

6 The court recommends that the defendant be
7 permitted to participate in a sex offender treatment
8 program while incarcerated if eligible.

9 The defendant is remanded to the custody of
10 the United States Marshal.

11 I note that to the extent I am permitted to do
12 so, I would impose the same 40-year sentence regardless
13 of how I resolved any objections that the defendant made
14 to the guideline calculation here. As far as I can see,
15 none of those objections, no matter how I had resolved
16 them, would have affected my sentencing judgment in this
17 case, that a sentence of 40 years is equal to and not
18 greater than necessary to achieve the purposes set forth
19 in the sentencing statute.

20 Are there any objections to this sentence
21 other than those previously raised?

22 MS. FITZGIBBON: No, your Honor.

23 MR. MOIR: Only the ones I previously raised
24 and the ones that are contained in my sentencing
25 memorandum.

1 THE COURT: Well, have I failed to address
2 anything in your sentencing memorandum because I'm happy
3 to do so now if you'd like me to?

4 MR. MOIR: I believe you've covered them, your
5 Honor.

6 THE COURT: If I did inadvertently omit it, I
7 want to assure you I've read the sentencing memorandum,
8 I found your arguments for variance in that memorandum
9 unpersuasive. To the extent I haven't commented on
10 them, it's just through inadvertence and I'm not being
11 asked to do so further here.

12 MR. MOIR: I'm not asking so.

13 THE COURT: Okay. Anything else? Okay.
14 Thank you.

15 I notify you that you have 14 days from the
16 date of the judgment to appeal your conviction and
17 sentence. If you don't file an appeal within 14 days,
18 you will lose the right to appeal. If you want to
19 appeal, consult with your attorney and direct him to
20 file a notice of appeal on your behalf. Or if you
21 prefer, you can ask the clerk's office for help. But
22 any notice of appeal does have to be filed within
23 14 days or you lose your right to appeal. And I impose
24 the sentencing judgment as I have read it. Thank you.

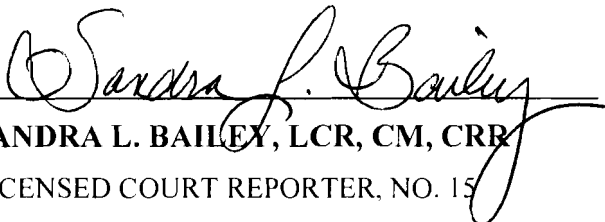
25 (Adjourned 4:25 p.m.)

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C E R T I F I C A T E

I, Sandra L. Bailey, do hereby certify that
the foregoing transcript is a true and accurate
transcription of the within proceedings, to the best of
my knowledge, skill, ability and belief.

Submitted: 9/12/13


SANDRA L. BAILEY, LCR, CM, CRR
LICENSED COURT REPORTER, NO. 15
STATE OF NEW HAMPSHIRE